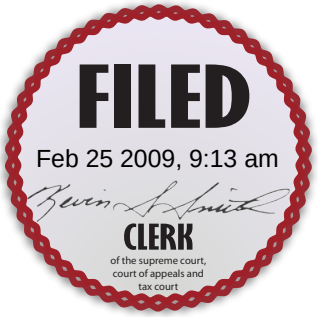

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IN THE
COURT OF APPEALS OF INDIANA

C.L.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0808-JV-452
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0802-JD-573

February 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

C.L. appeals the trial court's true finding that he committed what would be Operating a Vehicle While Intoxicated ("OWI") in a Manner that Endangers a Person,[1] a Class A misdemeanor, if committed by an adult. We affirm.

Issue

C.L. raises the sole issue of whether the State presented sufficient evidence that he was driving.

Facts and Procedural History

In February 2008, Indianapolis Metropolitan Police Department Officer Rodney Bradburn ("Officer Bradburn") saw a truck commit two traffic infractions. Inside the truck were five people, including C.L. Officer Bradburn stopped the truck to investigate the traffic infractions. C.L. exited the driver's seat and walked away from Officer Bradburn as he approached, disobeying the officer's repeated verbal instructions to stop. From C.L.'s smell and the appearance of his eyes, the officer perceived him to be intoxicated. Officer Bradburn arrested C.L.

The State alleged that C.L. committed delinquent acts that, if committed by an adult, would be: OWI, as a Class A misdemeanor, OWI, as a Class C misdemeanor, and Public Intoxication, a Class B misdemeanor. After a hearing, the trial court entered true findings of

[1] Ind. Code § 9-30-5-2(b).

OWI, as a Class A misdemeanor, and Public Intoxication.

C.L. now appeals the true finding of OWI.[2]

Discussion and Decision

C.L. argues that "the evidence failed to establish beyond a reasonable doubt a material element of the crime, namely that Defendant was the driver of the vehicle." Appellant's Brief at 5. A child who operates a vehicle while intoxicated commits what would be a misdemeanor if committed by an adult. Ind. Code § 9-30-5-2. The offense is a Class A misdemeanor if committed in a manner that endangers a person. I.C. § 9-30-5-2(b).

The parties stipulated that C.L. was sixteen years old. "Defendant does not deny that he was intoxicated on the night in question or that he was present in the truck when it was stopped by Officer Bradburn." Appellant's Br. at 7. Meanwhile, C.L. does not present argument regarding the element of "endangering a person," or for that matter, even include those words in his brief. C.L. states that "[t]he issue is solely whether the State has sustained its burden in establishing that Defendant was actually operating the vehicle." Id. "[T]he evidence provides a suspicion and nothing more. That is not enough." Id. at 8.

We review the appeal as follows:

> In reviewing the sufficiency of the evidence in a juvenile adjudication, "we neither re-weigh the evidence nor judge the credibility of the witnesses. Rather, we look only to the evidence most favorable to the trial court's

[2] C.L. does not challenge the true finding of Public Intoxication, if committed by an adult.

judgment and to the reasonable inferences to be drawn from that evidence." We affirm if there is substantial probative evidence to support the conclusion.

K.S. v. State, 849 N.E.2d 538, 543 (Ind. 2006) (citations omitted).

Officer Bradburn testified as follows:

A: I observe[d] the uh, driver side door open and a subject exit the driver seat.

Q: Okay, do you, do you know who the driver of the truck was?

A: It was later identified as [C.L.].

Q: Okay, how did you identify the driver?

A: I believe it was an Indiana driver's license.

Q: Okay, so after the driver exited the truck what did you do?

A: I then kept telling him to stop but he kept walking around in front of the vehicle over to the side walk and continued to walk back toward [street name].

Q: Okay, towards you or away from you?

A: He was walking away from me . . . .

. . .

A: As I, as I was walking toward the truck following him I look inside the truck [and] notice there's an empty driver seat I finally caught up to him on the side walk . . . .

Transcript at 11-12. Thus, Officer Bradburn testified that he saw "a subject exit the driver seat" and that he used C.L.'s driver's license to identify him. Id. at 11. After C.L. exited, the driver seat was empty. Officer Bradburn testified that C.L. was the person he arrested.

In addition, C.L. walked away from Officer Bradburn, contrary to the officer's

repeated instructions. The State cross-examined C.L. regarding his walking away from the officer.

> Q: [W]hen you got out of the truck you saw the police officer coming towards you?
>
> A: Yeah he was walking behind me and I walked around the truck.
>
> Q: So you were walking away from him?
>
> A: Yes. I didn't know.
>
> Q: You didn't know what?
>
> A: I didn't, I didn't know who, I seen, I looked back and seen him but I didn't, I wasn't trying to get away or anything I was just.
>
> Q: Well you got out of the truck . . .
>
> A: . . . Yeah.
>
> Q: And you walked away from him?
>
> A: Yeah I walked to the other side of the truck.
>
> Q: Did you have a good reason for going over there?
>
> A: No.

Id. at 37. C.L., his cousin, and a friend of theirs testified that a woman named Megan, not C.L., was driving the car when it was stopped. Megan did not testify.

"A verdict may be sustained based upon circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt." Lacey v. State, 755 N.E.2d 576, 578 (Ind. 2001). "[E]vidence of flight is relevant as circumstantial evidence of

[d]efendant's consciousness of guilt." Maxey v. State, 730 N.E.2d 158, 162 (Ind. 2000). C.L.'s argument is simply an invitation to reweigh the evidence, which we do not do. See K.S., 849 N.E.2d at 543. The evidence supports the trial court's true finding.

Affirmed.

MATHIAS, J., and BARNES, J., concur.